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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/172041

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 11, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on March 08, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's BadgerCare Plus (BCP) certification effective March 1, 2016, due to her status as a Medicare Part A or B recipient.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

█  
█

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], HSPC Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On February 8, 2016, the agency issued written notice to the petitioner advising that her BCP would be discontinued effective March 1, 2016. The basis for discontinuance was that the petitioner was eligible to begin receiving Medicare effective March 1, 2016.

3. On February 23, 2016 the agency issued a notice to petitioner advising her that as of March 1, 2016 she was enrolled in the Medicare Premium Assistance (QMB) plan, and that she could be eligible for MA if she met a deductible.
4. In lieu of BCP, the petitioner was placed on Elderly/Blind/Disabled (EBD) MA effective March 1, 2016, with a six-month deductible of \$2023.98, per notice dated February 29, 2016.

### **DISCUSSION**

Effective April 1, 2014, due to a change in federal and state law, childless adults in Wisconsin became eligible for BCP if several conditions were met. One condition, based on updated federal rules, is that the adult cannot be entitled to or be a Medicare recipient:

**§435.119 Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL.**

(a) *Basis.* This section implements section 1902(a)(10)(A)(i)(VIII) of the Act.

(b) *Eligibility.* Effective January 1, 2014, the agency must provide Medicaid to individuals who:

(1) Are age 19 or older and under age 65;

(2) Are not pregnant;

(3) *Are not entitled to or enrolled for Medicare benefits under part A or B* of title XVIII of the Act;

(4) Are not otherwise eligible for and enrolled for mandatory coverage under a State's Medicaid State plan in accordance with subpart B of this part; and

(5) Have household income that is at or below 133 percent FPL for the applicable family size.

42 C.F.R. § 435.119(b) [*emphasis added*]. There was no dispute that petitioner was *entitled* to receive Medicare benefits, so there is no requirement that Wisconsin provide her with the BCP-type of Medicaid. Wisconsin has chosen not to do so. *BadgerCare Plus Eligibility Handbook*, §2.1; Wisconsin State Plan Amendment #13-021-MM1, p. S32, approved 10/25/2013 (effective 1-1-2014), at <http://www.medicaid.gov>, “State Innovations – State Plan Amendments” link. There is no exception for an adult who declines Medicare, as petitioner testified that she did once she got the notice that her BCP was closing.

Petitioner’s representative also questioned the timing of the notice for the discontinuation of her BCP. While I understand his concerns, the agency is only required to mail an adequate notice of the action at least ten days before the effective date of the negative action. See *BadgerCare Plus Eligibility Handbook*, §29.1, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> and *Income Maintenance Manual*, §3.2.3, available online at <http://www.emhandbooks.wisconsin.gov/imm/imm.htm>; and 42 CFR § 431.211. The agency met this timeline.

Based on the foregoing, the preponderance of the evidence shows that the agency acted correctly here. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency correctly denied the petitioner's BCP certification effective March 1, 2016, due to her status as being entitled to or enrolled for Medicare.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied. The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one). The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of May, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 3, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability